



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Charles R. Spies, Esq.
Elizabeth Beacham White, Esq.
Clark Hill, PLC
601 Pennsylvania Avenue, NW
North Building, Suite 1000
Washington, DC 20004

MAY 27 2016

RE: MUR 7076 (formerly Pre-MUR 574)
Richard Tisei
Tisei Congressional Committee and
Brian Cresta in his official capacity as
treasurer

Dear Counsel:

On May 24, 2016, the Federal Election Commission (the "Commission") accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 52 U.S.C. §§ 30104 and 30125, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Ana Peña-Wallace 37 PS

Ana J. Peña-Wallace
Attorney

Enclosure
Conciliation Agreement

RECEIVED
FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
Richard Tisei)
Tisei Congressional Committee and)
Brian Cresta in his official)
capacity as treasurer)

Pre-MUR 574
OFFICE OF GENERAL
COUNSEL

CONCILIATION AGREEMENT

This matter was initiated by a *sua sponte* submission made to the Federal Election Commission (the "Commission") by Richard Tisei along with Tisei Congressional Committee and Brian Cresta in his official capacity as treasurer (collectively "Respondents"). The Commission engaged the Respondents in Fast-Track Resolution under the Commission's *sua sponte* policy, 72 Fed. Reg. 16,695 (Apr. 5, 2007), and thus has not made a finding that there is reason to believe a violation has occurred.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to findings of reason to believe, hereby enter into this Conciliation Agreement (the "Agreement"), which provides as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding and this Agreement has the effect of an agreement entered under 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Tisei Congressional Committee ("Committee") is the principal campaign committee of Richard Tisei. Brian Cresta is the Committee's treasurer.

2. Tisei was a candidate for Massachusetts's 6th Congressional District in 2012 and 2014.

3. Prior to becoming a federal candidate, Tisei served in the Massachusetts House of Representatives and State Senate from 1985 through 2011 and was the Republican nominee for Lieutenant Governor in 2010. His state campaign committee, the Tisei Committee ("State Committee"), terminated on March 3, 2015.

4. The Federal Election Campaign Act of 1971, as amended ("the Act") requires committee treasurers to file reports of contributions and expenditures in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1) and 11 C.F.R. § 104.1(a).

5. The Commission created a limited exemption to the definitions of "contribution" and "expenditure" for testing the waters activity, allowing individuals to conduct certain activities designed to evaluate a potential candidacy. *See* 11 C.F.R. §§ 100.72, 100.131. Permissible testing the waters activities include, but are not limited to, conducting polls, telephone calls, and traveling to determine the viability of the potential candidacy. *See* 11 C.F.R. §§ 100.72(a), 100.131(a). An individual who is testing the waters need not register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for Federal office or conducts activities that indicate he or she has decided to become a candidate. *See* 52 U.S.C. §§ 30102(e)(1), 30103(a); 11 C.F.R. § 101.1(a). All funds raised and spent for testing the waters activities are, however, subject to the Act's limitations and prohibitions, and all reportable amounts from the beginning of the testing the waters period must be filed with the

first financial disclosure report filed by a committee, even if the funds were received or expended prior to the current reporting period. *See* 11 C.F.R. §§ 101.3, 104.3(a), (b).

6. The Act prohibits federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by federal candidates from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office, including funds for any federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. 52 U.S.C. § 30125(e)(1)(A). Moreover, Commission regulations prohibit the transfer of funds or assets from a candidate's non-federal campaign committee to his or her federal campaign committee. 11 C.F.R. § 110.3(d).

7. In 2011, the State Committee made \$30,540 in payments to staff members, consultants, and vendors for work they performed while Tisei explored running for state or federal office. The disbursements included payments for polling, fundraising data analysis and staff work designed to help Tisei decide whether to run for office, and if so, whether that should be a state or federal office. Those payments were not disclosed on the Committee's disclosure reports filed with the Commission. The Commission has information showing that a portion of those payments qualified as federal testing the waters activity.

V. 1. Respondents violated 52 U.S.C. § 30125 by receiving non-federal funds from the State Committee.

2. The Committee failed to disclose any portion of these payments from the State Committee to staff members, consultants, and vendors on its reports filed with the Commission, in violation of 52 U.S.C. § 30104.

3. The Committee failed to disclose any payments to, or in-kind contributions

from, the State Committee on its reports filed with the Commission, in violation of 52 U.S.C. § 30104.

VI. Respondents will take the following actions:

1. Respondents will pay a civil penalty in the amount of Four Thousand Dollars (\$4,000) to the Federal Election Commission pursuant to 52 U.S.C. § 30109(a)(5).
2. Respondents will cease and desist from violating 52 U.S.C. §§ 30104 and 30125.
3. The Committee will amend its disclosure reports to correctly disclose the financial activity pursuant to the Act and Commission regulations, as the Commission's Reports Analysis Division may direct.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Daniel A. Petalas
Acting General Counsel

BY: Kathleen Guith
Kathleen Guith
Acting Associate General Counsel
For Enforcement

5/26/16
Date

FOR THE RESPONDENTS:

Elizabeth Beacham White
(Name) Elizabeth Beacham White
(Position) Counsel

Jan. 22, 2016
Date